Re GAN KIM CHONG, DECD.; GAN KIM HENG v. LEE SIEW SEOK

[O.C.J. (Raja Azlan Shah J.) March 25, 1969]
[K.L. — Originating Summons No. 466 of 1968]

Will — Construction — Inconsistency between clauses in Will — Later clauses must prevail — Maxim "cum due inter se pugnantia reperiuntur in testamento ultimum ratum est".

By clause 6 of his will the testator bequeathed 1/10 of his property in certain lands to his cousin but by subsequent clauses in the will he bequeathed the whole of his landed property in shares to his wife, sons and daughter.

Held: as the disposition in clause 6 of the will was inconsistent with the dispositions in the subsequent clauses, the later clauses prevail as being the latest expressions of the testator's intention and therefore the gift in clause 6 failed.

Case referred to:—

(1) *Re Hammond, Hammond* v. *Treharne* [1938] 3 All E.R. 308.

ORIGINATING SUMMONS.

Wong Soon Foh for the applicant.

Tan Keng Shoy for the respondent.

Raja Azlan Shah J.: The issue in this Originating Summons is whether by clause 6 of his will the testator has bequeathed 1/10 of the whole property comprised in E.M.R. 1127, E.M.R. 1010 and E.M.R. 1126 or only 1/10 of his share in that property to his cousin. If it is the former, then he has bequeathed approximately 1.1 acres to the cousin or if the latter, approximately 0.66 acres. These figures are obtained without taking into account the odd roods and poles.

Taking a plain reading of the disputed clause, the testator intends to bequeath 1/10 of the whole property comprised in E.M.R. 1127, E.M.R. 1010 and E.M.R. 1126 and not 1/10 of his share in that property. Clause 6 reads: "I give, devise and bequeath to my cousin . . . . one-tenth (1/10th) share in the *property** known as E.M.R. Nos. 1127, 1010 and 1126 containing the respective areas of 5 acres 0 rood 24 poles, 3 acres 3 rood 10 poles and 3 acres 1 rood 23 poles wherein I possessed sixth out of ten (6/10th) shares . .

It will be noticed that immediately after the word "property" the testator describes the land referred to as "known as E.M.R. 1127, 1010 and 1126". Furthermore, immediately following that he specifically states the sizes of the respective areas so that there will be no confusion as to the meaning of the word "property". It is clear that he intends to use the whole property comprised in E.M.R. Nos. 1127, 1010 and 1126 as the unity of measurement. He merely states his share in the enumerated areas and there is no intention to use his share in the areas as the unity of measurement.

Therefore, by clause 6 the testator bequeaths approximately 1.1. acres to the cousin. The testator's share in the land after deduction for this bequest is 5/10th of the land comprised in E.M.R. 1127, 1010 and 1126.

It is then said that clause 6 is void for inconsistency with clauses 7, 8, 9 and 10. In clause 7 the testator bequeaths to his daughter a 4/20th share of "the said landed property". In clause 8 he bequeaths to two of his sons a 6/20th share of "the said landed property". In clause 9 he bequeaths to another son a 4/20th share of "the said landed property". Finally, in clause 10 he bequeaths to his wife a 6/20th share of 'the landed property". It is therefore plain that by clause 7, 8, 9 and 10 the testator has disposed of his entire "landed property." The definition of the testator's "landed property" in clause 5 includes his share in the areas comprised in E.M.R. 1127, 1010 and 1126 — part of which share he purports to bequeath to his cousin in clause 6. As the disposition in clause 6 is inconsistent with the dispositions in clauses 7, 8, 9 and 10, the rule is that *cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est,* that is to say, the later clauses are to prevail as being the last expressions of the testator's intention. If I may quote a passage from (3rd edition) *Williams* on Wills, on page 388 which expressess the view: "If in the same will, there are two inconsistent and irreconcilable gifts, the rule is that, if the court can find nothing else to assist in determining the question, the later clause is to prevail, as being the last expression of the testator's wish." A case which illustrates the operation of the rule is *Re Hammond, Hammond* v. *Treharne.*(1) The issue in that case is whether the gift to Miss May's Mission is one of £100 or £500. The testator by his will gave a number of legacies to institutions, the amounts of all except one being stated in both words and figures to be £500. The amount of the remaining legacy was first stated in words to be "one hundred pounds" and then in figures "£500". Simonds J. said (on page 308):—

> "I think it is a case in which I should apply the maxim *cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est,* which is to say that an intention is to be attributed, sometimes arbitrarily, to the testator that, where in a will there are two inconsistent provisions, the later one is to prevail. It is an arbitrary rule in the sense that one can only give effect to the intention of the testator, but it is better to follow a general rule than to rely upon fine distinctions which can be of no substance. In this case, therefore, I shall adopt that principle. No doubt there is a *prima facie* rule that, where words and figures conflict, the words ought to prevail, but no case has been brought to my notice where that rule has been applied otherwise than in the case of commercial documents. The rule must,

* Italic supplied.

of course, give way to the context, but the context here justifies the view that the testator intended £500, and not £100."

For the above reasons I hold the gift in clause 6 fails. I set aside my earlier order made in Chambers. Costs to be paid out of the estate.

Order accordingly.

Solicitors: *Chooi & Co.; Cheah, Chew & Tan.*

DOROTHY KWONG CHAN v. AMPANG MOTORS LTD. & ANOR.

[A.C.J. (Raja Azlan Shah J.) March 26, 1969]
[K.L. — Civil Appeal No. 15 of 1967]

Hire-purchase — Motor car — Dealers agents of finance company — Motor car returned to finance company and taken in possession by it — Plea that motor car was not reasonably fit for the purpose for which it was hired — No breach of implied terms — Penalty — Damages — Allowance for accelerated payments.

The appellant claimed the return of $1,105 paid by her as part of the option money under a hire-purchase agreement relating to a motor car. The dealers pleaded that they were not agents of the finance company and therefore the action could not be brought against them. The finance company counterclaimed for damages for breach of contract and for arrears of two monthly instalments. The learned president of the sessions court held that the dealers were the agents of the finance company and that the action was rightly brought against them. He also held that the car that was contracted for was delivered to the appellant and that the defect in the car was not a defect that went to the root of the contract. The appellant had therefore committed a breach of the agreement by her failure to pay the instalments and he dismissed the appellant's claim and allowed the counterclaim for the finance company in the sum of $414.10.

Held, dismissing the appeal: (1) the learned president was right in holding that the dealers were the agents of the finance company;

(2) on the facts there was no breach of the implied stipulations of fitness and therefore the appellant had committed a breach of the agreement in refusing to pay the instalments and in returning the car;

(3) the provision in clause 6 of the agreement for the payment of compensation had every characteristic of a penalty and the claim founded on the clause must therefore fail;

(4) the finance company were entitled to damages and in assessing the damages an allowance or discount by way of rebate should be made in respect of accelerated payments to the finance company.

Cases referred to:—

(1) *Financings Ltd.* v. *Stimson* [1962] 3 All E.R. 386.

(2) *Branwhite* v. *Worcester Works Finance Ltd.* [1968] 3 All E.R. 104.

(3) *Astley Industrial Trust Ltd.* v. *Grimley* [1963] 2 All E.R. 47.

(4) *Dunlop Pneumatic Tyre Co. Ltd.* v. *New Garage & Motor Co. Ltd.* [1915] A.C. 79 at p. 86.

(5) *Bridge* v. *Campbell* [1962] 1 All E.R. 385.

(6) *Overstone Ltd.* v. *Shipway* [1962] 1 All E.R. 52.

(7) *Financings Ltd.* v. *Baldock* [1963] 1 All E.R. 443.

(8) *Yeoman Credit Ltd.* v. *Waragowski* [1961] 3 All E.R. 145.

(9) *Yeoman Credit Ltd.* v. *McLean* [1962] 1 All E.R. 57.

(10) *Interoffice Telephones Ltd.* v. *Robert Freeman Co. Ltd.* [1957] 3 All E.R. 479.

MAGISTRATE'S CIVIL APPEAL.

V. Oorjitham for the appellant.

Ronald Khoo for the respondents.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is a hire-purchase case relating to a motor-car, a Ford Consul 375 De Luxe Saloon. The appellant was the hirer; the first respondents were the dealers; the second respondents were the finance company. The finance company bought the said car from the dealers and let it on hire-purchase to the appellant. In the action, the appellant claimed for the return of the sum of $1,105 paid by her as part of the option money under the agreement and damages for breach of contract. She pleaded that it was an implied term of the contract that the said car should be reasonably fit for the purposes for which it was hired and that in breach of the term the said car was not so fit and consequently she was entitled to repudiate the agreement.

In their defence the dealers pleaded that since they were not agents of the finance company or privy to the agreement, the appellant was not competent to bring the action against them.

The finance company pleaded that since the appellant had an opportunity to examine and test and did in fact examine and test the said car before signing the agreement, the implied condition of reasonable fitness (which is denied) did not avail the appellant. They put in further alternatives, among others: (1) they admitted the defects but contended that they were minor defects so that clause 1(iv) of the terms and conditions of the agreement exempted them from liability. Clause 1(iv) reads:—

"The owner gives no warranty whatsoever in respect of the vehicle as to description fitness roadworthiness repair or otherwise, nor shall the owner be responsible for any delay in delivery."

(2) They were willing and able to perform the agreement under the dealers' warranty clause to bring the said car to a mechanical condition which was expected of a new car of the same make and type, but the appellant refused. The finance company counterclaimed